



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Peter Jensen

**SUBJECT:** SEE BELOW

**DATE:** 10-05-10

Approved \_\_\_\_\_

Date \_\_\_\_\_

10/5/10

## SUBJECT

**AUTHORIZATION TO NEGOTIATE AND EXECUTE AN EXTENSION TO THE REIMBURSABLE SPACE ACT AGREEMENT WITH THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AMES RESEARCH CENTER**

## REASON FOR ADDENDUM

The existing agreement expires on October 15, 2010. NASA has informed the City that if the extension is not executed by that date, the City will lose access to Moffett Field. Staff believed that this action could be done administratively, however recently learned that Council action is needed.

## RECOMMENDATION

- (a) Council by motion waive the 10-day noticing requirement for the following item, approve its placement on the agenda, and consider the following recommendation.
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute an extension to the Reimbursable Space Act Agreement with NASA Ames Research Center (ARC) for Utilization of Moffett Federal Airfield for Enforcement and Emergency Response Capabilities, for an extension period not to exceed two years, with a space fee not to exceed \$32,600 over the two year term of the agreement and fuel cost in the amount of federal government cost plus 14.7%.

## OUTCOME

By authorizing the extension of the Agreement with NASA ARC, Council authorizes the payment of rent for the use of space and payments for fuel for the ongoing needs of the Police Helicopter Unit.

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## **BACKGROUND**

In 2003 the Police Helicopter Unit was displaced from the Norman Mineta International Airport and had only two options for relocation. The relocation to Moffett Federal Airfield was preferable to the alternate location of the County's Reid Hillview Airport as the Moffett facility is more secure and better suited to the needs of the City.

The City of San Jose first executed an agreement for use of the facility from NASA ARC in June 2003 for a term of three years. The agreement provided upfront cost estimates through a separate document called a "Support Agreement", which was attached as an exhibit to the original agreement. The original agreement also provided rights for either party to terminate with 30 days written notice to the other party. This agreement was extended annually through October 2009.

In October 2009, the City and NASA ARC executed a revised Fully Reimbursable Space Act Agreement. The term of the agreement was for one year with the option to request to extend by delivering written notice 90 days before the expiration of the term. The City provided adequate notice for that extension. In August 2010, NASA ARC provided the City with a Modification document for an additional term of two years, expiring September 30, 2012, subject to termination. Under the terms of the agreement and extension, City, or NASA ARC, could terminate at any time, with the City obligation to reimburse the federal government's costs incurred up to the effective date of the notice of termination and incurred as a result of such termination.

## **ANALYSIS**

The City has occupied hangar and office space at Moffett Federal Airfield since September 2003. Since that time both PD and GS staff have researched other possible locations for operating the Police Helicopter Unit. The PD is looking into future options for relocation, but will require time to evaluate and fund these options. During that time it is necessary for this City operation to remain at the current location until another opportunity is secured.

The agreement contains a liability and risk of loss provision that is not standard to City contracts. It requires the City to waive any claims for damage against NASA, and to indemnify NASA from third party claims even when such damage is caused by NASA's negligence.

Staff recommends that Council approve the recommended extension, which will allow an effort to renegotiate the provision beyond the October 15 expiration date and authorize an extension of up to two years, with the ability to enter into a shorter interim extension for the purposes of negotiating this and other terms.

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### **EVAULATION AND FOLLOW-UP**

After the authorization to the City Manager is adopted, the City will attempt to negotiate changes to the liability and risk of loss provision.

### **POLICY ALTERNATIVES**

Not applicable.

### **PUBLIC OUTREACH/INTEREST**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The approval of this agreement does not meet any of the above criteria; however, this memorandum will be posted on the City's website for the October 5, 2010, Council agenda.

### **COORDINATION**

This item has been coordinated with the Police Department, the City Manager's Budget Office and the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

This item is consistent with the General Budget Principles in that it protects a vital core City service.

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### **COST SUMMARY/IMPLICATION**

Rent for this agreement is approximately \$16,000 the first year of the option and \$16,600 for the second year. The total rent for the two year extension is \$32,600. Sufficient funding for the first year of this extension is included in the 2010-2011 Adopted Police Department Non-Personal/Equipment appropriation.

Fuel costs are included in the annual PD budget for helicopter use and are processed through a separate purchase order with NASA. The budget for 2010-2011 is \$70,000.

### **BUDGET REFERENCE**

Fund #	Appn #	Appropriation Name	Total Appn.	2010-2011 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	0502	Non Personal/ Equipment	\$21,963,427	VIII-208	28653 6/22/2010

### **CEQA**

Not a project, File No. PP10-066(f).

/s/

PETER JENSEN

Director of General Services

For questions please contact MATT MORLEY, DEPUTY DIRECTOR, at 535-1298.